SUPREME COURT, U. S.

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No. 291

In the Supreme Court of the United States

ROBERT C. TREFFRY, et al., Appellants

v.

LOUISE TAYLOR, as Director of Licenses for the State of Washington,

Appellee,

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE NORTHWEST CHAPTER, INC.; HOME BUILDERS ASSOCIATION OF GREATER SEATTLE, and HOME BUILDERS ASSOCIATION OF GREATER TACOMA, INC.,

Intervenor-Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

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INDEX

	Page
Opinion Below	1
Jurisdiction	2
Statute Involved	2
Questions Presented	2
Statement of the Case	4
The Questions are Substantial	7
Conclusion	20
Appendix A	21

CITATIONS

Cases

A Book named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of the Commonwealth of Massachusetts,—U.S.—, 16 L.ed2d 1 (1966)	8
Acme Finance v. Huse, 192 Wash. 96, 73 P.2d 341 (1937)	18
Adkins v. Children's Hospital, 261 U.S. 525 (1923)	8
Alexander v. Neal, 364 Mich. 485, 110 N.W.2d 797 (1961)	16
American Oil Co. v. Neill, 380 U.S. 451 (1965)	2
In re Anastaplo, 366 U.S. 82 (1961)	11
Barsky v. Board of Regents, 347 U.S. 442 (1954)	11
Cohen v. Hurley, 366 U.S. 117 (1961)	11
Cummings v. Missouri, 4 Wall 277 (1866)	10
Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951)	15
Fraenkel v. Bank of America Nat. Trust & Sav. Ass'n., 40 Cal 2d 845, 256 P.2d 569 (1953)	16
Ex Parte Garland, 4 Wall 333 (1866)	10
Hynes v. Grimes Packing Co., 337 U.S. 86 (1949)	18
Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)	8

Cases Continued

	Page
Konigsberg v. State Bar of California, 366 U.S. 36 (1961)	11
Lochner v. New York, 198 U.S. 45 (1905)	8
Martin v. Hatcher, Ada County, Idaho, Civil Case No. 36787	18
Pierce v. Society of Sisters, 268 U.S. 510 (1925)	18
Schware v. Board of Bar Examiners, 353 U.S. 232 (1957)	10, 12
Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948)	10
Toomer v. Witsell, 334 U.S. 385 (1948)	18
Treffry v. Taylor, 67 Wn.2d 477, 408 P.2d 269 (1965)	1, 5
Truax v Raich, 239 U.S. 33 (1915)	11
West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)	10
Yick Wo v. Hopkins, 118 U.S. 356 (1886)	10

Statutes

Ariz. Rev. Stats. Sec. 32.1101	18
Cal. Bus. & Prof. Code Sec. 7071.9	18
Idaho Code Sec. 54-2612	18
N. Mex. Stat. Sec. 67-16	18
28 U.S.C. 1257 (2)	2, 5
RCW 4.16.040	6
Wash. Laws of 1963, Chapter 77 (RCW 18.27)	2, 3, 4, 6, 16, 21

Other Authorities

Emerson, *Nine Justices in Search of a Doctrine*, 64 Mich. L. Rev. 219 (1965)	8
McCloskey, *Economic Due Process and the Supreme Court*, [1962] Supreme Court Review 34	8, 9, 10

In the Supreme Court of the United States

October Term, 1965

No.

ROBERT C. TREFFRY, et al., Appellants

v.

LOUISE TAYLOR, as Director of Licenses for the State of Washington,

Appellee,

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE NORTHWEST CHAPTER, INC.; HOME BUILDERS ASSOCIATION OF GREATER SEATTLE, and HOME BUILDERS ASSOCIATION OF GREATER TACOMA, INC.,

Intervenor-Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

Appellants appeal from the judgment of the Supreme Court of the State of Washington entered on January 27, 1966, reversing judgment of the court below, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Washington is reported at 67 Wn.2d 477, 408 P.2d 269. The

memorandum opinion of the trial court is unreported. It is included in the Record 54-62.

JURISDICTION

This action was commenced as a challenge to the validity of the Washington Contractors' Registration Act, Chapter 77, Washington Laws of 1963 (RCW 18.27) as being repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and as violating various provisions of the Constitution of the State of Washington. The final judgment of the Supreme Court of the State of Washington was entered on January 27, 1966, and Notice of Appeal was filed in that court on April 26, 1966.

The jurisdiction of the Supreme Court to review this decision on appeal is conferred by 28 U.S.C. 1257 (2). The following decision sustains the jurisdiction of the Supreme Court to review the judgment on appeal: *American Oil Co. v. Neill*, 380 U.S. 451 (1965).

STATUTE INVOLVED

Chapter 77, Washington Laws of 1963 (RCW 18.27) is attached as Appendix A.

QUESTIONS PRESENTED

1. Is Chapter 77, Washington Laws of 1963 (RCW 18.27), on its face and as applied, invalid as being repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States?

(a) Is freedom of occupation among those basic rights protected by the due process clause?

(b) Is the law, in depriving appellants and others of their freedom of occupation, repugnant to the due process clause?

(c) Is the law, in conditioning the right to engage in or to continue to engage in business, on making a deposit in advance as security for honest business obligations to be incurred in the future, repugnant to the due process clause? *i.e.* Is such a requirement reasonably related to an individual's fitness or capacity to engage in the contracting business? Is such a law reasonably related to a constitutionally permissible objective?

(d) Does the law, in failing to provide a special period of limitations within which actions against the deposit must be commenced and thereby causing the State to hold the deposits for at least six years after the contractor has gone out of business, deprive appellants and others of property without due process of law?

(e) Is the law, in depriving unregistered contractors of access to state courts to enforce their claim for work done, repugnant to the due process clause?

2. Is Chapter 77, Washington Laws of 1963 (RCW 18.27), on its face and as applied, repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

(a) Is the law, in failing to relate the amount of the bond or deposit to the size of the contractor's business, repugnant to the equal protection clause?

(b) Are appellants denied equal protection of law because they are required to post a $2,000.00 cash de-

posit with the State while large contractors are able to comply with the law by paying a nominal bond premium?

STATEMENT OF THE CASE

Appellants are small, self-employed, independent contractors. They commenced this action in July 1963 to challenge the validity of the "Contractors' Registration Act" enacted by the 1963 Washington legislature, and to secure an injunction restraining the Director of Licenses from enforcing the Act.

Three western Washington chapters of associations of large established contractors intervened in the state court action in support of the law. These organizations through common legal representation are largely responsible for drafting and securing the enactment of the law.

How the Federal Questions Are Presented

The action was brought as a class action for a declaratory judgment. The complaint raised the federal constitutional questions presented here. (Amended Complaint paragraphs IX and X; Record 24-25). The trial court while noting these questions found it unnecessary to reach them, because it held that the Act violated Article II, Section 19 of the Washington State Constitution. (Memorandum Opinion, Record 57).

The federal constitutional questions were urged again before the Supreme Court of the State of Washington as additional arguments in support of the trial court's judgment. (Brief of Respondents, page 19-37, Record 199).

The State Supreme Court considered these contentions and rejected them.

Treffry v. Taylor, 67 Wn.2d 477, 482, 408 P.2d 269, 273 (1965):

> "Respondents' pleadings further alleged that the act is unconstitutional because (1) it is violative of the due process and equal protection clauses of the federal and state constitutions . . ."

67 Wn.2d at 484, 408 P.2d at 274:

> ". . . we hold that the standards fixed by the legislature for the registration of contractors and the classifications prescribed by the Act do not violate any of the constitutional mandates relied upon by respondents."

Appellants' position throughout this litigation has been that the statute on its face and as applied is invalid as being repugnant to the due process and equal protection clauses of the Fourteenth Amendment and that it deprives appellants and others similarly situated of their rights guaranteed by these constitutional provisions. Since the State Court upheld the State statute under this attack, appeal lies to this Court pursuant to 28.U.S.C. 1257(2).

The law in question is a peculiar form of business regulation. It is not a license law. No discretion is exercised by a state board or agency. Instead, a contractor's right to stay in business is contingent upon his ability to buy a bond or make a cash deposit.

If a contractor does any work in Washington without being "registered", he is barred from suing in the state

courts to enforce claims for work done (RCW 18.27.080); he has also committed a criminal offense (RCW 18.27.020).

In order to be registered, a contractor must pay a registration fee (RCW 18.27.070), file with the Director of Licenses certain information (RCW 18.27.030), carry liability insurance of a specified amount (RCW 18.27.050), and post a $2,000.00 bond or cash deposit if a "general" contractor, or a $1,000.00 bond or deposit if a "specialty" contractor (RCW 18.27.040).

Appellants' objections to this law stem principally from the bond-cash deposit requirement.

The bond is conditioned (RCW 18.27.040) to cover virtually all honest business debts which the contractor may incur. It also covers negligence. It does not by its terms, cover liability arising from fraud or dishonesty. The law fails to place a time limit within which claims against the bond must be brought; consequently, the bond is exposed for at least six years after the work is completed under the general Washington Statute of Limitations (RCW 4.16.040).

Because of the breadth of these conditions, bonding companies have erected high financial qualifications before they will issue a bond. They uniformly require a minimum net worth of $35,000.00 for the $2,000.00 bond and $25,000.00 for the $1,000.00 bond. (Findings of Fact IX and X, Record 66-67). For the thousands of small contractors who cannot meet the requirements of the bonding companies, this law can be complied with only by making a cash deposit. The Director of Licenses has announced

that such cash deposits will be held until *at least* six years after the contractor has gone out of business. The "deposit" is in fact an "exaction".

Seven of the eight appellants are unable to secure the bond required by the law, (Findings of Fact VII and VIII, Record 66). These men are nevertheless honest and competent craftsmen with good credit reputations, (Findings of Fact XXV, Record 70). Most of the appellants cannot raise the money to make the cash deposit with the State, (Findings of Fact XII and XIII, Record 67). All of the appellants have been in the contracting business for years. They have accumulated tools and equipment for use in their various specialties. A legislative denial of the right to pursue their trades deprives appellants of valuable economic rights. Beyond this, it deprives them of their personal freedom of occupation.

THE QUESTIONS ARE SUBSTANTIAL

In essence this appeal asks the Court to examine the extent of its apparent withdrawal from the area of so-called "economic due process" and to recognize that an individual's freedom of occupation may be just as precious as his freedom of speech and to hold that state legislation may not subvert freedom of occupation without regard to some constitutional limitation.

Appellants ask the Court to hold that legislative prerequisites for engaging in business must bear a rational relation to an individual's fitness and capacity to engage in that business and to a constitutionally permissible objective.

1. A Limitation or Freedom of Occupation Must Bear a Rational Relation to a Constitutionally Permissible Objective.

Although some statements of this court in the immediate post 1937 period indicate an almost total withdrawal from the area of economic due process and a virtual abandonment of the rational relation test, the Court has never held that an individual's freedom of occupation is wholly without constitutional protection. In bringing this appeal, appellants are not asking the Court to return to the pre-1937 extreme of *Adkins, Lochner,* etc.,[1] but merely to reaffirm that freedom of occupation is entitled to some constitutional protection.

Appellants believe that recent opinions of this Court indicate concern with an apparent dichotomy that has developed between personal rights and economic rights.[2] If there is indeed a dual standard for review, appellants ask the Court to consider whether such a double standard, if appropriate at all, is applicable to an individual's freedom of occupation. It is submitted that the freedom of an individual to follow his chosen occupation is as basic and is as dear to most individuals as their freedom to read *Fanny Hill*[3] or to watch "The Miracle".[4] See especially McCloskey,

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1 Adkins v. Children's Hospital, 261 U.S. 525 (1923); Lochner v. New York, 198 U.S. 45 (1905).

2 See Emerson, *Nine Justices in Search of a Doctrine,* 64 Mich. L. Rev. 219 (1965) especially pp. 222-225.

3 A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of the Commonwealth of Massachusetts, — U.S. —, 16 L.ed2d 1 (1966).

4 Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952).

Economic Due Process and the Supreme Court, [1962] Supreme Court Review 34, 46:

> "But most men would probably feel that an economic right, such as freedom of occupation, was at least as vital to them as the right to speak their minds. Mark Twain would surely have felt constrained in the most fundamental sense, if his youthful aspiration to be a river-boat pilot had been frustrated by a State-ordained system of nepotism. Needless to say, no disparagement of freedom of expression is here intended. But its inarguable importance to the human spirit, on the one hand, does not furnish an adequate ground for downgrading all economic rights, on the other."

As Professor McCloskey points out, it is no protection to a small minority or to an independent businessman to say that as long as the Constitution affords him the opportunity to disagree with the decision of the majority, he has received his full constitutional due. The small independent contractors of Washington State are no match in the legislative chambers for the lobbying machines and efficient organizations of Intervenors. The young men of today who will be prevented from entering the contracting industry tomorrow by this law are even less able to effectively fight for their future rights. "To speak of their power to defend themselves through political action is to sacrifice their civil rights in the name of an amiable fiction." McCloskey, *Economic Due Process and the Supreme Court,* [1962] Supreme Court Review 34, 50:

> "But the scattered individuals who are denied access to an occupation by State-enforced barriers are about as impotent a minority as can be imagined. The would-be barmaids of Michigan or the would-be plumbers of Illinois have no more chance against the entrenched

> influence of the established bartenders and master plumbers than the Jehovah's Witnesses had against the prejudices of Minersville School District. In fact the Witnesses may enjoy an advantage, for they are at least cohesive; and other 'discrete' minorities, such as racial groups, have occasionally displayed respectable capacities to exert political leverage by virtue of their very discreteness. *Not so the isolated economic man who belongs to no identifiable group at all.*" (Emphasis added)

In *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957), the Court undertook a judicial review of a law infringing occupational freedom, starting at 238:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment . . . . . *but any qualification must have a rational connection with the applican't fitness or capacity* . . ." (Emphasis added)

McCloskey, op.cit. page 59, suggests that in *Schware* the court appears to have "at least taken the preliminary steps for re-establishing judicial review of laws infringing occupational freedom." Appellants do not view this as "re-establishment", but rather as an affirmation of a principle consistently applied by the Court since 1866; namely, that legislative qualifications on the right to engage in an occupation must relate to a person's fitness or capacity to engage in that occupation. *Cummings v. Missouri*, 4 Wall 277, 319 (1866); *Ex Parte Garland*, 4 Wall 333, 379 (1866); *Yick Wo. v. Hopkins*, 118 U.S. 356 (1886); *Takahashi v. Fish and Game Commission*, 334 U. S. 410 (1948). There is no evidence that Chief Justice Hughes viewed his opinion in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) as

inconsistent with his earlier comment in *Truax v. Raich*, 239 U. S. 33, 41 (1915):

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure."

The Court clearly reiterates in the trio of right-to-practice-law cases in 1961 that a state may not arbitrarily forbid the following of a particular profession. *Konigsberg v. State Bar of California*, 366 U. S. 36 (1961); *In re Anastaplo*, 366 U. S. 82 (1961); *Cohen v. Hurley*, 366 U. S. 117 (1961). See also the dissenting opinions of Justices Frankfurter, Douglas and Black in *Barsky v. Board of Regents*, 347 U. S. 442 (1954).

Justice Douglas dissenting at 472:

> "The right to work, I had assumed, was the most precious liberty that man possesses."

Justice Black dissenting at 459:

> ". . . the right to practice is, as Mr. Justice Douglas shows, a very precious part of the liberty of an individual physician or surgeon. It may mean more than any property. Such a right is protected from arbitrary infringement by our Constitution, which forbids any State to deprive a person of liberty or property without due process of law."

Relying on this line of authority, appellants contend that the $2,000.00 cash deposit requirement in the Contractors' Law bears no rational connection to an individual's fitness or capacity to be a contractor and that the applica-

tion of the principle annunciated in *Schware* would invalidate the law in question here.

The record establishes that the Washington Contractors' Law will prevent many men from engaging in or continuing to engage in the contracting business. The appellants' situations illustrate this. The trial court found that each of the appellants "have good credit records regularly pay their debts, are competent in their respective crafts, and their continuation in the contracting business in no way harms or threatens the health, safety, morals or welfare of the people of the State of Washington." (Findings of Fact XXV, Record 70) The court also found that it was impossible for some of the appellants to comply with the cash deposit requirement of the law. (Findings of Fact XII and XIII, Record 67) (No error has been assigned to these Findings.) The law deprives these appellants of the right to continue their chosen occupation.

A law producing such a result can be constitutionally justified only if it bears a rational relation to a constitutionally permissible objective. Presumably, the objective of regulation of the contracting industry is to protect the public from incompetent, fraudulent, or unlawful actions by members of that industry. Does the bond-cash deposit requirement of the Washington law bear a reasonable relation to that objective?

a. No Protection from Incompetency.

The Washington Contractors' Registration Law affords no protection from incompetency. Contractors will be reg-

istered alike so long as they post the cash deposit without regard to their level of skill or past experience. The registration is automatic and no licensing board or any other body with discretionary power considers the qualifications of a contractor to perform his work. If a five year old child sends in his cash deposit, the Director of Licenses will issue his certificate.

b. No Protection from Fraud.

Does the law protect the public from dishonesty? It will be noted that no examination is made into a contractor's moral fitness or prior reputation. Presumably, a convicted bunco artist serving time in the penitentiary would be registered as a contractor if he sent in his $2,000.00 deposit. Nor is the bond or cash deposit conditioned to protect against dishonesty or fraudulent activity. The deposit is required principally as advance security for *honest business debts.* This feature of the Washington Contractors' Law distinguishes it from legislation in other states requiring bonds in certain industries. Such bonds are normally conditioned to indemnify against fraud, dishonest or illegal acts.

If the bond required by the Washington Law were not conditioned to cover honest business debts, the requirements of the bonding companies would not be so high and more contractors could comply with the law. The principal substantive due process question raised by this appeal is whether a law requiring a person to post a cash deposit of a substantial amount as security for the payment of future honest business obligations is reasonably related to a constitutionally permissible objective. Clearly such a law,

in providing security *only* for honest debts, is not reasonably related to the prevention of fraud.

c. Protection from Possible Future Insolvency?

The only conceivable objective of the cash deposit requirement of the Washington law is protection from contractors who subsequently become insolvent. Is this a constitutionally permissible objective? To what extent may a statute aimed at this objective impair the freedom of occupation of the individuals being regulated? Does a $2,000.00 bond or deposit afford any real protection in the event of insolvency? Is the ability to secure a $2,000.00 bond or pay a $2,000.00 cash exaction reasonably related to probability of subsequent insolvency? Is the possibility of future insolvency any greater in the contracting industry than in other industries? Are there no limits to the legislative power in this area? What if the deposit required were $10,000.00 or $100,000.00? May all businesses be legislatively required to put up security for their debts in advance of incurring them? Doesn't this type of legislation proceed from a presumption of dishonesty or insolvency basically at odds with our usual presumption of innocence?

Appellants strongly question whether legislative protection from the *mere possibility* of *future* business insolvency is a constitutionally permissible objective. But even if it were, certainly any minimal protection afforded by a statute so oriented must be balanced against the impairment of personal rights caused by the statute and must be judged in the light of other less drastic legislative alternatives. *Dean Milk Co. v. City of Madison*, 340 U. S. 349 (1951).

Is it necessary to legislate many honest, small contractors out of business in order to solve the problems of the contracting industry? The legislature could undoubtedly solve the problems of juvenile delinquency by incarcerating all children between the ages of five and twenty—appellants suspect, however, that this Court would find such a solution constitutionally objectionable.

2. The Law is Invidiously Discriminatory.

The cash exaction aspect of the law becomes more onerous when it is considered that the amount of the exaction bears no relation to the size of the individual's business. A $2,000.00 bond or deposit is meaningless for a contractor building multi-story office buildings. The same deposit is unnecessarily large for a contractor doing small home remodeling jobs.

The typical "small contractor" (like appellants) is an individual who works by himself and has no employees. He works on one job at a time—usually home remodeling. He will work in several fields of specialization, as required to do a complete job. He is thus a "general contractor" as defined by this law. But his contracts will usually range from $100.00 to $1,000.00 in amount.

Several aspects of the law as written combine to work a denial of equal protection: 1) Because the conditions of the bond are so broad and its size unrelated to the applicant's business, the typical small contractor cannot purchase the bond. 2) Because the law omits a statute of limitations, a cash deposit will be held for six years after the contractor quits business.

The combination of these circumstances is such that the law merely requires the large contractor, with a bonding capacity, to pay a $10.00 or $15.00 premium for the $2,000.00 bond. In stark contrast, however, the law requires the small contractor without a bonding capacity to pay a $2,000.00 cash exaction which is not refundable within a foreseeable period of time. The statute arbitrarily discriminates against the smaller contractor.

Although the law has no significant impact on the large contractor, it directly forces many small contractors out of business. It greatly reduces the opportunities for a self-employed person to enter this industry. It tends to halt the development and growth of the industry and to confine the industry to large established contractors, such as the members of the Intervenor associations.

3. The Law in Denying Access to State Courts is Repugnant to the Due Process Clause.

A Washington contractor who continues to do business without posting his cash deposit or otherwise registering is barred from suing in the state courts to collect the money he has earned. (RCW 18.27.080).

Although some states have enforced such a provision in license laws, *Fraenkel v. Bank of American Nat. Trust & Savings Ass'n.*, 40 Cal.2d 845, 256 P.2d 569 (1953), *Alexander v. Neal*, 364 Mich. 485, 110 N.W.2d 797 (1961), no case has been found sustaining such an extreme penalty in a registration law.

There is a difference. Under a license law a state agency exercises discretion in granting or denying a license and

an opportunity is afforded for judicial review. Under a registration law there is neither discretion nor review. The denial of registration follows automatically from failure to post a bond or cash deposit. The function of a license law is to screen an applicant's qualifications. The function of a registration law is primarily informational—the governmental activity is ministerial rather than discretionary.

To deprive a person of his right to enforce his claim for work he has done merely because he has failed to comply with a ministerial requirement is a denial of procedural due process. Not only is the penalty disproportionately severe, but the applicant is deprived of his right to sue without ever having had an opportunity to have the denial of his registration administratively or judicially reviewed, as would be the case under a license law.

A contractor who cannot afford to withdraw $2,000.00 from his working capital for a period of more than six years, automatically loses his right to enforce claims for work he has done; if a private bonding company determines that it does not wish to sell him a bond. There are no legislative standards to control the bonding company in exercising its "discretion" and there is no judicial review from its decision.

Therefore, even if the legislative requirement of a $2,000.00 bond or cash deposit were otherwise valid, it becomes invalid when coupled with the extreme penalty of forfeiture of the right to enforce claims for work done.

Appellants are immediately affected by this penalty provision. They cannot comply with the law, (Record 67). The law therefore forces them to choose between going out of

business or operating in violation of the law and risking criminal prosecution as well as loss of their right to sue to recover for work done. To avoid this dilemma, this action was commenced for declaratory and injunctive relief a few days before the law was to become effective (Record 2). Both the Washington Supreme Court and the United States Supreme Court have frequently held under similar circumstances that the parties had standing to secure a judicial determination of the issues.

Acme Finance v. Huse, 192 Wash. 96, 73 P.2d 341 (1937).

Pierce v. Society of Sisters, 268 U.S. 510 (1925).
Toomer v. Witsell, 334 U.S. 385 (1948).
Hynes v. Grimes Packing Co., 337 U.S. 86 (1949).

4. The Questions Are of National Significance.

These questions are substantial and of national significance at this time.

In 1963 when Washington enacted its law, only Arizona had a comparable bond requirement for contractors. Ariz. Rev. Stats. Sec. 32.1101. Since this action was commenced, Idaho, California and New Mexico have enacted contractor bond requirements similar to the Washington law. Idaho Code Sec. 54-2612; Cal. Bus. & Prof. Code, Sec. 7071.9; New Mex. Stat. 67-16. A trial court in Boise held the Idaho statute unconstitutional on June 10, 1966.

Martin v. Hatcher, Ada County, Idaho Civil Case No. 36787.

Occupational regulation through bonding is emerging as a popular form of legislative buck-passing. It is easy for a

legislature to pass to a bonding company the task of determining who should be permitted to engage in business and to prescribe impossibly high alternatives to a bond.

No standards are prescribed to guide the bonding companies' determination. The bonding company is a private organization entitled to decide for itself what risks it will underwrite. There is no judicial review from a denial of a bond application, yet a denial by one company will usually preclude consideration by another.

No contention is made here that a legislature is powerless to require bonds in certain industries. Appellants do assert, however, that there are limitations. A legislature may not require *any kind of a bond* in *all* industries..

Some judicial guidelines are needed. May the right to engage in *all* businesses be conditioned on posting a bond? May the legislature require *all* businessmen to post security in advance for their future honest business obligations? Considering the breadth of this bond and the nature of the contracting industry, the Washington Contractors' Registration Act is an extreme example of the deprivation of freedom of occupation through business regulation. A refusal to consider the questions raised by this appeal would be tantamont to a conclusion that there are no constitutional limitations on the power of the legislature to impose bond or cash deposit requirements on all businesses.

CONCLUSION

Plenary review of the issues involved in this appeal is respectfully urged. The questions raised relating to legislative limitations on freedom of occupation are of national significance. Many hundreds of small contractors, including appellants, look to the Court, in deciding this appeal, to preserve their right to continue to work as self-employed contractors.

If the Court should conclude that appeal is not the proper route for seeking review, the Court is respectfully urged to grant certiorari.

Respectfully submitted,

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APPENDIX A

CHAPTER 77, WASHINGTON LAWS OF 1963
RCW 18.27 REGISTRATION OF CONTRACTORS

Section 1. (RCW 18.27.010) A "contractor" as used in this act is any person, firm or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof including the erection of scaffolding or other structures or works in connection therewith; or, who, to do similar work upon his own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein. A "general contractor" is a contractor whose business operations require the use of more than two unrelated building trades or crafts whose work the contractor shall superintend or do in whole or in part. The terms "general contractor" and "builder" are synonymous. A "specialty contractor" is a contractor whose operations as such do not fall within the foregoing definition of "general contractor".

Section 2. (RCW 18.27.020) It shall be unlawful for any person to submit any bid or do any work as a contractor until such person shall have been issued a certificate of registration by the state department of licenses. A partnership or joint venture shall be deemed registered if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does

business shall be registered. A violation of this section shall be a misdemeanor.

Section 3. (RCW 18.27.030) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director of licenses and which shall include the following information pertaining to the applicant.

(1) Employer social security number.

(2) Industrial insurance number.

(3) Employment security department number.

(4) State excise tax registration number.

(5) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

(6) The name and address of each partner if the applicant be a firm or partnership, or the name and address of the owner if the applicant be an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant be a corporation. The information contained in such application shall be a matter of public record and open to public inspection.

Section 4. (RCW 18.27.040) Each applicant shall, at the time of applying for a certificate of registration, file with the director of licenses a surety bond running to the State of Washington if a general contractor, in the sum of two thousand dollars; if a specialty contractor, in the sum of one thousand dollars, conditioned that the applicant will

pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of negligent or improper work or breach of contract in the conduct of the contracting business. Any person having a claim against the contractor for any of the items referred to in this section may bring suit upon such bond in the superior court of the county in which the work is done or of any county in which jurisdiction of the contractor may be had. A copy of the complaint shall be served by registered or certified mail upon the director of licenses at the time suit is started and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the surety and the director shall transmit the complaint or a copy thereof to the surety within forty-eight hours after it shall have been received. The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond, but in case claims pending at any one time exceed the amount of the bond, claims shall be satisfied from the bond in the following order:

(1) Labor, including employee benefits;

(2) Taxes and contributions due the state of Washington;

(3) Material and equipment;

(4) Claims for breach of contract.

In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the director shall suspend the registration of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished.

In lieu of the surety bond required by this section the contractor may file with the director a cash deposit or other negotiable security acceptable to the director.

In the event of a judgment being entered against such deposit, the director of licenses shall upon receipt of a certified copy of a final judgment, pay from the amount of the deposit said judgment.

Section 5. (RCW 18.27.050) At the time of registration the applicant shall furnish to the director satisfactory evidence that the applicant has procured and has in effect public liability and property damage insurance covering the applicant's contracting operations in the sum of not less than twenty thousand dollars for injury or damage to property and fifty thousand dollars for injury or damage including death to any one person and one hundred thousand dollars for injury or damage including death to more than one person.

In the event that such insurance shall cease to be effective the registration of the contractor shall be suspended until such insurance shall be reinstated.

Section 6. (RCW 18.27.060) A certificate of registration shall be valid for one year and shall be renewed by the same procedure as for an original registration on or before August first of each year. The director shall issue to the applicant a certificate of registration upon compliance with the registration of this act.

Section 7. (RCW 18.27.070) The applicant shall pay to the director of licenses a registration or renewal fee of; if a general contractor, thirty-five dollars; if a specialty contractor, twenty dollars.

Section 8 (RCW 18.27.080) No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registration is required under this act without alleging and proving that he was a duly registered contractor at the time he contracted for the performance of such work or entered into such contract.

Section 9 (RCW 18.27.090). This act shall not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the public service commission in construction, maintenance or development work incidental to their own business;

(4) Any construction, repair or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale or installation of any finished products, materials or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) Any construction, alteration, improvement or repair of personal property;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than one hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply

in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than one hundred dollars for the purpose of evasion of this act or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he is a contractor, or that he is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor;

(12) Any person working on his own property, whether occupied by him or not, and any person working on his residence, whether owned by him or not;

(13) Owners of commercial properties who use their own employees to do maintenance, repair and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his professional capacity, an electri-

cian licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his license;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his sole compensation or as an employee with wages as his sole compensation.

(16) Contractors on highway projects who have been pre-qualified as required by chapter 13 of the Laws of 1961, RCW 47.28.070, with the Highway Department to perform highway construction, reconstruction or maintenance work. (As amended)

Section 10. (RCW 18.27.100) Except as provided in section 2 for partnerships and joint ventures, no person who has registered under one name as provided in this act shall engage in the business, or act in the capacity of a contractor under any other name unless such name also is registered hereunder. All advertising and all contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor which show a contractor's name or address shall show the contractor's name or address as registered hereunder. No contractor shall advertise that he is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this act. All individual contractors and all partners, associates,

agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contactor or activities related thereto.

Section 11. (RCW 18.27.900) If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Section 12. This act shall take effect August 1, 1963.

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JOHN F. DAVIS, CLERK

No. 291

In the Supreme Court of the United States

ROBERT C. TREFFRY, et al., Appellants

v.

LOUISE TAYLOR, as Director of Licenses for the State of Washington,

Appellee,

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE NORTHWEST CHAPTER, INC.; HOME BUILDERS ASSOCIATION OF GREATER SEATTLE, and HOME BUILDERS ASSOCIATION OF GREATER TACOMA, INC.,

Intervenor-Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

APPENDIX TO JURISDICTIONAL STATEMENT

FRANCIS J. CONKLIN
Gonzaga University School of Law
Spokane, Washington

REILEY AND ANNIS
ELDON H. REILEY
EUGENE I. ANNIS

757 Lincoln Building
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INDEX TO APPENDIX

	Page
Remittitur	1
Opinion of the State Supreme Court	2
Dissenting Opinion of Donworth, Rosellini C. J. Concurring	8
Memorandum Opinion of the Trial Court	19
Findings of Fact and Conclusions of Law of the Trial Court	29

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

REMITTITUR

No. 37801

Spokane County No. 171271

This is to certify that the opinion of the Supreme Court of the State of Washington filed on November 24, 1965, became the final judgment of this court in the above entitled case on January 27, 1966. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached certified copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

The Petition for Rehearing was Denied on January 27, 1966.

The cost bill of intervenors/appellants is disallowed, costs are taxed in favor of appellant and against respondents in the amount of Four Hundred Eleven and 50/100 ($411.50) Dollars and in favor of respondents and against intervenors/appellants in the amount of Two Hundred Sixty-three and 21/100 ($263.21) Dollars.

cc: Court Reporter

Hon. John J. O'Connell
Mr. Lloyd Peterson
Mr. R. Ted Bottiger

Reiley and Annis
Mr. Eldon H. Reiley

Lycette, Diamond & Sylvester
Mr. Lyle L. Iversen

Mr. John R. Kramer

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 8th day of February, A.D. 1966.

WILLIAM M. LOWRY

Clerk of the Supreme Court, State of Washington

OPINION OF STATE SUPREME COURT

Appeal from a judgment of the Superior Court for Spokane County, No. 171271, William H. Williams, J., entered March 24, 1964. *Reversed.*

Action to enjoin enforcement of a statute. Defendants appeal from a judgment in favor of the plaintiffs.

The Attorney General, R. Ted Bottiger, Special Assistant, and *Lloyd W. Peterson, Assistant,* for appellants.

Reiley & Annis, by *Eldon H. Reiley* and *Eugene I. Annis,* for respondents.

Lycette, Diamond & Sylvester and Lyle L. Iversen, for intervenors.

OTT, J.—This appeal presents a single issue: Does the title to chapter 77, Laws of 1963, p. 476, "An Act providing for the registration of contractors; and prescribing penalties," violate article 2, § 19, of the state constitution, "No bill shall embrace more than one subject, and that shall be expressed in the title"?

The trial court held that the act was unconstitutional for the reason that "The bonding provisions in Section 4 of said law and the insurance provision in Section 5 of The Act are not germane or related to the subject of registration."

The questioned act contains 12 sections. Section 1 defines the term "contractor." Section 2 requires the contractor to procure a certificate of registration from the Department of Licenses before engaging in the contracting business, and provides penalties for violation. Section 3 prescribes the information the contractor must furnish to the department in his application for registration, prior to issuance of the certificate. Section 4, p. 477, provides:

> Each applicant shall, at the time of applying for a certificate of registration, file with the director of licenses a surety bond running to the state of Washington if a general contractor, in the sum of two thousand

dollars; if a specialty contractor, in the sum of one thousand dollars, conditioned that the applicant will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of negligent or improper work or breach of contract in the conduct of the contracting business. Any person having a claim against the contractor for any of the items referred to in this section may bring suit upon such bond in the superior court of the county in which the work is done or of any county in which jurisdiction of the contractor may be had. A copy of the complaint shall be served by registered or certified mail upon the director of licenses at the time suit is started and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the surety and the director shall transmit the complaint or a copy thereof to the surety within forty-eight hours after it shall have been received. The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond, but in case claims pending at any one time exceed the amount of the bond, claims shall be satisfied from the bond in the following order:

(1) Labor, including employee benefits;

(2) Taxes and contributions due the state of Washington;

(3) Material and equipment;

(4) Claims for breach of contract.

In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the director shall suspend the registration of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished.

> In lieu of the surety bond required by this section the contractor may file with the director a cash deposit or other negotiable security acceptable to the director.
>
> In the event of a judgment being entered against such deposit, the director of licenses shall upon receipt of a certified copy of a final judgment, pay from the amount of the deposit said judgment.

Section 5, p. 479, provides:

> At the time of registration the applicant shall furnish to the director satisfactory evidence that the applicant has procured and has in effect public liability and property damage insurance covering the applicant's contracting operations in the sum of not less than twenty thousand dollars for injury or damage to property and fifty thousand dollars for injury or damage including death to any one person and one hundred thousand dollars for injury or damage including death to more than one person.
>
> In the event that such insurance shall cease to be effective the registration of the contractor shall be suspended until such insurance shall be reinstated.

Section 6 authorizes the Director of Licenses to issue a certificate for one year upon compliance with the provisions of the act. Section 7 prescribes the fees to be paid for registration. Section 8 requires a certificate of registration as a prerequisite to commencing an action in any court to recover for the performance of work as a contractor. Sections 9 and 10 grant certain exemptions. Section 11 is the severability clause, and § 12 declares the effective date of the act.

In adjudicating the sufficiency of the title to a legislative enactment, we have adhered to the following general rules:

[1,2] The title to a bill need not be an index to its contents; nor is the title expected to give the details contained in the bill. *Gruen v. State Tax Comm'n*, 35 Wn.2d 1, 211 P.2d 651 (1949); *Cory v. Nethery*, 19 Wn.2d 326, 142 P.2d 488 (1943); *Sorenson v. Kittitas Reclamation Dist.*, 70

Wash. 528, 127 Pac. 102 (1912); *State ex rel. Zent v. Nicols*, 50 Wash. 508, 97 Pac 728 (1908); *State ex rel. Cole v. City of New Watcom*, 3 Wash. 7, 27 Pac. 1020 (1891).

When the words in a title can be given two interpretations, one of which renders the act unconstitutional and the other constitutional, we adopt the constitutional interpretation and sustain the constitutionality of the act. *Martin v. Aleinkoff*, 63 Wn.2d 842, 389 P.2d 422 (1964); *State ex rel. Dawes v. Highway Comm'n*, 63 Wn.2d 34, 385 P.2d 376 (1963); *Engen v. Arnold*, 61 Wn.2d 641, 379 P.2d 990 (1963); *Yelle v. Bishop*, 55 Wn.2d 286, 347 P.2d 1081 (1959); *Hammock v. Monroe Street Lumber Co.*, 54 Wn.2d 224, 339 P.2d 684 (1959).

The test of the sufficiency of a title is that it must give notice of its object so as reasonably to lead to an inquiry into its contents. *Rourke v. Department of Labor & Indus.*, 41 Wn.2d 310, 249 P.2d 236 (1952); *Cory v. Nethery, supra; Sorenson v. Kittitas Reclamation Dist., supra.* The title to an act may be general, and all matters incidental or germane thereto may be written into the body of the law. *Gruen v. State Tax Comm'n. supra; In re Peterson's Estate*, 182 Wash. 29, 45 P.2d 45 (1935); *National Ass'n of Creditors, Inc. v. Brown*, 147 Wash. 1, 264 Pac. 1005 (1928), and case cited.

The crucial words in the questioned title are "contractors," "registration," and "penalties." Are these words sufficient notice of the object of the act so as reasonably to lead to further inquiry into the contents of the act? If so, the title meets the test of sufficiency.

[3] Upon reading the title to this act, a contractor engaged in business in the state of Washington would be led to inquire whether his business was within the purview of the regulatory measure. The first section of the act would give him the answer. If his business required that he register he would then reasonably seek further information from the act to determine whether he qualified for a certificate of registration. Section 4, *supra*, would put him on notice that, in order to qualify and be issued a certificate

of registration, he would be required to furnish a surety bond to the state for the payment of the obligations enumerated in § 4. Section 5, *supra*, would put him on notice that a public liability and property damage insurance policy is required.

Every legislative enactment requiring registration is an exercise of the legislature's police power, and is, by its nature, regulatory of the subject matter. The word "registration" encompasses all regulatory provisions which the legislature enacts, in the proper exercise of its police power.

We conclude that the title to chapter 77, Laws of 1963, gave sufficient notice of the object of the act so as reasonably to lead to further inquiry into the contents of the act, and thus meets the test of sufficiency.

Does the act embrace more than one subject?

[4] Since regulation is inherent in every legislative enactment requiring registration, all matters incidental and germane to registration may be written in the body of the law. In the instant case, the legislature, in the proper exercise of its discretion, has required that, as a condition precedent to the issuance of a certificate of registration, the applicant is required to establish his financial responsibility. This requirement, although regulative in nature, is germane to the subject of registration.

We hold that the requirement of establishing financial responsibility does not introduce another subject, and that chapter 77, Laws of 1963, does not embrace more than one subject.

The respondents contend that, although the trial court held the act unconstitutional because of a defective title, the trial court's judgment can be sustained upon any other constitutional ground within the pleadings and the proof.

Respondents' pleadings further alleged that the act is unconstitutional because (1) it is violative of the due process and equal protection clauses of the federal and state constitutions in that the bond or financial responsibility requirement is unreasonable and confiscatory, the act is

discriminatory and creates arbitrary classifications, and requires registration as a condition precedent to maintaining an action predicated upon a construction contract and (2) that the provisions of the act, taken as a whole, constitute imprisonment for debt in violation of art. 1, § 17, of the state constitution.

Although these constitutional issues were presented to the trial court, the court did not predicate its judgment upon any of these alleged constitutional violations. We must assume that the trial court found them to be without merit.

[5] A legislative enactment requiring the registration of contractors is an exercise of the police power of the state. *Clarke v. Dwyer*, 56 Wn.2d 425, 353 P.2d 941 (1960); *Parrott & Co. v. Benson*, 114 Wash. 117, 194 Pac. 986 (1921); *State v. Seattle Taxicab & Transfer Co.*, 90 Wash. 416, 156 Pac. 837 (1916); *State v. Bowen & Co.*, 86 Wash. 23, 149 Pac. 330 (1915).

The exercise of police power by the legislature is an attribute of sovereignty. It is an essential element of the power to govern. The only limitation upon the exercise of this sovereign power by a legislative body is that the questioned enactment must reasonably tend to correct some evil or promote some public interest, and that it must not be violative of any positive mandate of the constitution. *Clark v. Dwyer, supra*, at 432, and case cited.

One who attacks the classification provisions of a legislative enactment has the burden of establishing that the classification is manifestly arbitrary, unreasonable, inequitable, and unjust. *State v. Persinger*, 62 Wn.2d 362, 368, 382 P.2d 497 (1963), and cases cited. To require the furnishing of a bond to insure compliance with the law is a reasonable exercise of police power. *Clark v. Dwyer, supra; State ex rel. Milwaukee Grain Elevator Co. v. Robinson*, 186 Wash. 557, 59 P.2d 365 (1936); *State v. Seattle Taxicab & Transfer Co., supra; State v. Bowen & Co., supra; Ferguson-Hendrix Co. v. Fidelity & Deposit Co. of Maryland*, 79 Wash. 528, 140 Pac. 700 (1914); *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1101 (1911).

The wisdom, necessity or expediency of a legislative enactment is not subject to judicial review. *Port of Tacoma v. Parosa,* 52 Wn.2d 181, 324 P.2d 438 (1958); *Bulette v. Bremerton,* 34 Wn.2d 834, 210 P.2d 408 (1949); *Gazzam v. Building Serv. Employees Int'l Union, Local 262,* 29 Wn.2d 488, 188 P.2d 97 (1947); *State ex rel. Govan v. Clausen,* 108 Wash. 133, 183 Pac. 115 (1919).

[6] The imposition of a fine or imprisonment for violation of a legislative enactment is not imprisonment for debt, but a statutory penalty imposed upon any person who shall knowingly and intentionally violate a lawful mandate of the legislature. *Decker v. Decker,* 52 Wn.2d 456, 326 P.2d 332 (1958); *Austin v. Seattle,* 176 Wash. 654, 30 P.2d 646, 93 A.L.R. 203 (1934); *State v. Seattle Taxicab & Transfer Co. supra.*

Applying the above rules to chapter 77, Laws of 1963, we hold that the standards fixed by the legislature for the registration of contractors and the classifications prescribed by the act do not violate any of the constitutional mandates relied upon by respondents.

The judgment of the trial court is reversed, and the cause remanded with instructions to enter judgment in accordance with the views herein expressed.

FINLEY, WEAVER, HUNTER, HAMILTON, and HALE, JJ., concur.

HILL, J., concurs in the result.

DONWORTH, J. (dissenting)—My reasons for disagreeing with the holding of the majority that the title of chapter 77, Laws of 1963, is adequate in the face of art. 2, § 19, of our constitution (which requires that the subject of a legislative bill shall be expressed in its title) may be briefly stated.

The past and present legislative history of statutes and bills regulating and licensing various occupations and busi-

nesses convinces me that the title of the 1963 act violates the constitutional provision referred to above.

This act is the *first* (and only) time the legislature has used the word "registration" in the title of an act to describe regulation and licensing of an occupation or business. The appendix attached to this dissent cites the 14 prior acts and their titles. As we were advised by counsel during oral argument, the legislature has recognized the difference between the words "registration" and "regulation" by their action in the 1965 extraordinary session when legislation amending RCW 18.27.010-100 (Laws of 1963, ch. 77) was introduced in the House of Representatives (House Bill No. 292) with an *amended title*, reading as follows:

> AN ACT Relating to the regulation of contractors; prescribing penalties; and repealing chapter 77, Laws of 1963 and RCW 18.27.010 through 18.27.100.

As this court stated in *In re Bale*, 63 Wn.2d 83, 89, 385 P.2d 545 (1963):

> (. . . Assuming it to be true . . . that these bills never came to a vote before the entire legislature, the fact that they were introduced and referred to committees has some probative value relative to the legislature's intent.

The bill which was originally introduced was a re-enactment of chapter 77, Laws of 1963, with a new title, in which the word "registration" was changed to read "regulation."

The House passed the bill after considerable amendment activity pertaining mainly to the inclusion or exclusion of sections 4 and 5. Not once did the House consider using the word "registration" in the title of the amendatory act, even when the House Committee on Licenses *removed* sections 4 (requiring a bond) and 5 (requiring the public liability insurance), and advised passage without those provisions. The House itself recognized that what the bill contemplates is not mere "registration" but "regulation."

Bill No. 292 passed the House without section 4 (requiring the bond) but with section 5 (requiring the public liability insurance). The bill was sent to the Senate where its consideration was indefinitely postponed on May 7, 1965, the last day of the extraordinary session.

This history is *relevant* because the legislature has, in effect, demonstrated that it recognizes that there is a significant difference in the meaning of "registration" and "regulation" to legislators, once the error is called to their attention. Whatever the cause of the failure of the Senate to act on the bill, there is nothing in the record of the legislature to indicate that such inaction was in any manner related to the replacment of the word "registration" with "regulation" by the House so as to correct the title of the act. It is clear that the House and probably the Senate, entertained the belief that the present title is inadequate to cover all the provisions of the 1963 act, as required by art. 2, § 19. However, the majority opinion appears to ignore this past and present legislative history and holds that these two words are legally synonymous, although they are not synonymous according to either the dictionary or the legislative usage. I, therefore, feel compelled to discuss the merits of the issue of whether "registration" means the same as "regulation."

The purpose of Const. art. 2, § 19, has been stated and restated by this court. The latest expression is in *Young Men's Christian Ass'n v. State,* 62 Wn.2d 504, 506, 383 P.2d 497 (1963):

> The purposes of this constitutional mandate are: (1) to protect and enlighten the members of the legislature against provisions in bills of which the titles give no intimation; (2) to apprise the people, through such publication of legislative proceedings as is usually made, concerning the subjects of legislation that are being considered; and (3) to prevent hodgepodge or logrolling legislation.

Also, see *Miller v. Tacoma,* 61 Wn.2d 374, 378 P.2d 464 (1963), and cases cited, including *Gruen v. State Tax*

Comm'n, 35 Wn.2d 1, 211 P.2d 651 (1949), which state precisely the same points. In the *Gruen* case, there is an excellent discussion of the decisions of this court wherein it has held that a title may be restrictive or general. The rules were succinctly restated by the *Gruen* opinion in 35 Wn.2d at 22, 23 where it was said:

> Titles to statutes may be general or restrictive; or, in other words, broad or narrow, since the legislature in each case has the right to determine for itself how comprehensive shall be the object of the statute. And it also has a wide discretion in the particularity of the title selected to express it, provided that, by a fair construction, such title complies with the constitutional provision in question.
>
> A general title may be said to be one which is broad and comprehensive, and covers all legislation germane to the general subject stated. It is not an objection that it covers more than the subject of the body of the act, but it must not, in any event, cover less. It is not necessary that it index the details of the act, or give a synopsis of the means by which the object of the statute is to be accomplished. All matters which are germane to the subject may be embraced in one act. Under the true rule of construction, the scope of the general title should be held to embrace any provision of the act, directly or indirectly related to the subject expressed in the title and having a natural connection thereto, and not foreign thereto. Or, the rule may be stated as follows: Where the title of a legislative act expresses a general subject or purpose which is single, all matters which are naturally and reasonably connected with it, and all measures which will, or may, facilitate the accomplishment of the purpose so stated, are properly included in the act and are germane to its title.
>
> On the other hand, a restrictive title is one where a particular part or branch of a subject is carved out and selected as the subject of the legislation. *If the legislature seeks this method, and notwithstanding a general title could have been adopted which would have*

> *covered the entire subject and authorized legislation upon the whole of it, the body of the act must be confined to the particular portion of the subject which is expressed in the limited title.* The courts cannot enlarge the scope of the title. They are invested with no dispensing power. The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been more comprehensive, if, in fact, the legislature has not seen fit to make it so. (Italics mine.)

The major issue on this appeal is whether the title, as worded by the legislature, gives adequate notice of the inclusion of requirements of bonds and insurance in order for the applicant contractor to receive a "certificate of registration." The title reads: "An Act providing for the registration of contractors; and prescribing penalties." The key word in the title with regard to this controversy is "registration."

The trial court reasoned in his memorandum opinion that "registration" is a word of relatively narrow meaning, and, as used in the title of the act, indicates a listing of contractors, but not the regulation of contractors. The trial court expressed the belief that the subject matter of the provisions of sections 4 and 5, requiring bonds and insurance, respectively, is related to and germane to regulation but not to mere registration. Respondent has argued, and the trial court believed, that registration is a much narrower subject than regulation; that registration is actually only a part of an over-all program of regulation of contractors created by this act.

I am of the opinion that the trial court and respondent are correct. Theirs is the most acceptable view of the problem—for to hold that bonding and insurance are germane to registration is to hold that "registration" and "regulation" are synonymous. To me, the meanings of the two words are clearly different. Registration connotes merely a listing of contractors or, at most, an official certification list; regulation connotes requirements and controls established for

the operation of a contracting business resulting in the licensing of persons desiring to engage in that occupation upon their compliance with certain conditions.

Appellant has argued that registration is "generic." The word may be generic in the sense that there can be many kinds of registration for different purposes, but the problem is that registration normally just does not mean to the general public or to the busy legislator that bonds and insurance are required in order for a contractor to obtain a certificate of registration. Webster's Third International Dictionary (1961) at 1912, gives several meanings, none of which is broad enough to give this kind of notice. As pointed out above, in referring to the appendix to this dissenting opinion, a careful examination of all statutes enacted by the legislature pertaining to licensing or regulation of various professions or businesses shows that, in *every single instance* where the state requires bonds or insurance, the title either broadly refers to the subject matter by characterizing the subject as *regulation* (*i.e.* relating to the regulation or licensing of an area of commerce) or specifically mentions the bond or insurance requirements.

Appellant also argues that bonding and insurance may be required as prerequisites to registration, and that, by simply using the word "registration" in the title, the public is put on inquiry as to what the prerequisites to registration are. I agree that bonding and insurance *may* be made prerequisites to registration if they are included in the title. However, I disagree with appellant's contention that simply because "registration" is to be required, the public is put on inquiry as to the prerequisites of registration, regardless of whether the prerequisites are germane to the word "registration." I recognize that "registration" may give notice of some prerequisites, such as supplying specific information (as provided in section 3 of the act). If the registration pertained to "financial ability of contractors," it might give warning that certain *financial* prerequisites were involved. Sections 4 and 5 pertain to financial ability of contractors. The subject of financial ability is important in the *regulation* of contractors—but it has relationship to *registration*

of contractors *only* because both proof of financial ability and registration are related to the broader subject of regulation. Financial ability has no direct connection with *registration*, unless it is made a special prerequisite to qualify for registration outside the normal meaning of the word registration itself.

I conclude, therefore, that the title of chapter 77, Laws of 1963, is "restrictive" within the meaning of the *Gruen* case, *supra*.

Reference has been made to the appendix which cites the statutes of this state regulating or licensing persons in certain businesses wherein bonds or insurance are required as prerequisites. In none of the titles of these statutes does the word "registration" even appear, although a form of registration through licensing is required as a part of the system of regulation. Neither the public nor the legislature has any warning or any way of knowing of the broad requirements and provisions of the act when the legislature suddenly introduces the new and much narrower word "registration" rather than broader words such as the word "regulation" that has heretofore been used. The natural inference is that the words "registration" and "regulation" cannot and should not be construed synonymously because heretofore "registration" has been only a possible (but not necessary) part of regulation.

For the reasons stated above, I am firmly of the opinion that the constitutional requirements of art. 2 § 19, have not been met because the title is not broad enough in scope. Of course, courts can and should construe a word reasonably, but, as the court stated in *Gruen v. State Tax Comm'n*, *supra* at 23: "The courts cannot enlarge the scope of the title. They are invested with no dispensing power." As I read the majority opinion, this court is doing just that in this case.

The majority attempts to equate "registration" with "regulation." It appears to me that the majority opinion has assumed its answer to the constitutional issue by looking at the body of the act before it has determined the

meaning of the title, and has thus violated one of our basic rules in the application of Const. art. 2, § 19.

The following quotation from the majority opinion demonstrates this misconception of our rule:

> Upon reading the title to this act, a contractor engaged in busines in the state of Washington would be led to inquire whether his business was within the purview of the regulatory measure. The first section of the act would give him the answer. If his business required that he register, he would then reasonably seek further information from the act to determine whether he qualified for a certificate of registration. Section 4, supra, would put him on notice that, in order to qualify and be issued a certificate of registration, he would be required to furnish a surety bond to the state for the payment of the obligation enumerated in § 4. Section 5, *supra*, would put him on notice that a public liability and property damage insurance policy is required.
>
> Every legislative enactment requiring registration is an exercise of the legislature's police power and is, by its nature, regulatory of the subject matter. The word "registration" encompasses all regulatory provisions which the legislature enacts, in the proper exercise of its police power.

In the quoted portion of its opinion, I think that the majority is in error in two respects. First, it begs the question in its first sentence, and later in its second paragraph, by an ipse dixit supported by no case authority, no examples of statutes, and no reference to even the common man's understanding of the word "register" as reflected by modern dictionaries. Indeed. the majority opinion appears to say that "registration" is broader in meaning and connotation than "regulation," when it states that the word "registration' encompasses all regulatory provisions which the legislature enacts, in the proper exercise of its police power." As explained above, it seems to me much more appropriate to view *regulation* as the encompassing concept—*registration* may be merely a part (although not a necessary

part) of a regulatory scheme. The majority's use of these important terms seems to me, at least, inappropriate, and perhaps illogical. How can an unnecessary part be greater than the whole?

The greater error, however, is the second one, when the majority states that a contractor may refer to the body of the act to obtain notice of what the act contains and thereby attempts to show that its understanding of the word "registration" is correct. This is a violation of one of our basic rules for the application of Const. art 2, § 19.

The rule violated by the majority is stated in *Great Northern Ry. v. Cohn*, 3 Wn.2d 672, 680, 101 P.2d 985 (1940):

> In determination of the question whether the title of an act is in compliance with the constitutional requirement invoked by respondent, the title must be construed with reference to the language used in the title only and not in the light of the context of the act.

This rule was quoted with approval and reaffirmed in *Gruen v. State Tax Comm'n, supra* at 9.

The legal authority relied on by the majority for holding that resort must be had to the examination of the body of the act in order to understand the title appears to be its paraphrase of a part of a sentence in *Rourke v. Department of Labor & Indus.*, 41 Wn.2d 310, 249 P.2d 236 (1952). That opinion does not hold, or even suggest, by it treatment of the case, that this court or a legislator or the public must look to the sections or the body of an act to obtain notice of what the subject of the act is.

In the *Rourke* case, in the next two paragraphs immediately following the sentence paraphrased by the majority, this court stated, at p. 312:

> A title may be general or restrictive, that is, it may be either broad and comprehensive and cover all legislation germane to the general subject stated, or it may be one in which a particular part or branch of the sub-

ject is carved out and selected as the subject of the legislation. *Gruen v. State Tax Comm'n, supra,* pp. 22, 23. *A restrictive title is not regarded as liberally as is a general one, and provisions of the bill which it does not fairly embrace cannot be given force. Gruen v. State Tax Commission, supra,* p. 21.

By these rules, we conclude that the title of the questioned act is restrictive, and does not comply with the second clause of the constitutional mandate because it (1) does not give notice that certain firms, as employers, are affected by the act, but refers only to employees; (2) contains no reference to medical and surgical care, but only to compensation; (3) does not mention charitable institutions, but the body of the act mentions and excludes churches and educational institutions, from its provisions; (4) is silent regarding the workmen's compensation law and does not indicate that amendment of that law is intended, yet the act itself refers to that law for construction of the word "extrahazardous" and for the determinations of contributions and benefits, and purports to extend the coverage of that law. (Italics mine.)

We should note that the *Rourke* case was heard en banc. There was only one dissenter.

As I understand the *Rourke* majority opinion, this court held that the title was restrictive *without looking at the body of the act.* It then held that several things, which were plausibly related to the title but not included within its scope, were outside the title. For example, employers were not given notice that they were within the scope of the act because the title referred only to "employees" even though it is obvious that every "employee" must have an employer, as the dissent in that case points out. Without going further into the details of the *Rourke* case, suffice it to say that, in my opinion, that case is no authority for the majority's statement that the sections of the act give notice to or inform anyone of anything. The constitution requires that the subject of an act shall be expressed in

its title, which naturally eliminates the body of the act as performing this office.

Of course, there is a valid reason for referring to the body of an act when applying art. 2. § 19. One must look at the body of the act to determine if it is within the scope of the title after one has determined the scope of the title. But that is not what the majority has done in this case. It has confused the issue of the meaning of "registration" by looking at the body of the act to see if, after the court learns what provisions the act contains, it can find any plausible connection of any kind between those provisions and the title. That reasoning is contrary to the decisions in both the *Rourke* case, *supra*, and the *Gruen* case, *supra*. Yet, those are cases which constitute a part of the basic authority relied on by the majority to support its position in this case. No other cases cited by the majority support their approach.

In summary, it is my opinion that the title of the bill involved in this case violates the second mandate of Const. art. 2 § 19, that the subject of the bill shall be expressed in the title. For this reason, I dissent from the majority opinion. I do not disagree with the majority as to the other issues raised by respondent.

I would affirm the trial court's judgment on this ground, thereby effecting the dissolution of the pending injunction and the dismissal of the action.

ROSSELLINI, C. J., concurs with DONWORTH, J.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

ROBERT C. TREFFRY, et al,
Plaintiffs

vs.

LOUISE TAYLOR, as Director of Licenses of the State of Washington,
Defendant,

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SEATTLE NORTHWEST CHAPTER, INC.; HOME BUILDERS ASSOCIATION OF GREATER SEATTLE, and HOME BUILDERS ASSOCIATION OF GREATER TACOMA, INC.,
Intervenors.

NO. 171271

MEMORANDUM OPINION

HON. WM. H. WILLIAMS, *Judge*

January 20, 1964

The plaintiffs, some eight persons, purportedly acting on behalf of themselves and all others similarly situated, bring this action and ask that the court permanently enjoin the defendant, Louise Taylor, the Director of Licenses of the State of Washington, from enforcing Chapter 77, Laws of

1963, or any portions thereof or in any manner performing any act giving effect to the provisions of that said act, and further declare that Chapter 77, Laws of 1963 of the State of Washington, is unconstitutional and also award judgment to the plaintiffs and all others similarly situated in the amount of the sums of money, if any, they paid to the defendant under the provisions of that act. Following the institution of this action the court on September 9, 1963, allowed the Associated General Contracts of America, Seattle Northwest Chapter, Inc.; Home Builders Association of Greater Seattle, and Home Builders Association of Greater Tacoma, Inc. to intervene.

Chapter 77, Laws of 1963, is an act which provides for the registration of all persons engaged in the contracting business as defined by the act. In addition there are provisions requiring the posting of a bond, the obtaining of liability insurance and the giving of certain information with reference to the business. The act also provides for certain priorities in actions against the bond required and also the exceptions of certain individuals or firms from the provisions of the act. A violation of the act by a contractor exposes him to prosecution for a misdemeanor and also prohibits him from the use of the courts of this state to enforce any of the contracts into which he may have entered in violation of the act.

It is the position of the defendant and also the intervenor, that the plaintiffs here have no standing in court because there is no judicial controversy in existence, and likewise, that this court lacks jurisdiction of the subject matter of the action. It is their position that since the act has not actually

been enforced against the plaintiffs, there is no judicial controversy and that what the plaintiffs are asking for is merely an advisory opinion rather than a declaratory judgment. They also contend that since the plaintiffs are asking for money damages, the action must be brought in Thurston County as required by R.C.W. 4.92.010. It was the opinion of the court at the time the motion to dismiss was first raised that this court did have jurisdiction and it is still of that opinion. (State ex rel Robinson v. Superior Court, 182 Wash. 277; and State ex rel Flemming v. Cohn, 12 Wn. 2d 415) The question raised by the prayer of the plaintiffs' complaint wherein they ask for damages against the state need not be decided in view of plaintiffs' contention at the trial that if that portion of the relief sought would deprive this court of jurisdiction, then they would ask that it be stricken.

As to the question of whether or not there is a judicial controversy present it is the court's feeling that now as at the time of trial, there is such an issue. The defendant stipulated that had the plaintiffs made application for a registration certificate, they would have been refused by the Director of Licenses without first posting the bond as required by Section 4 of the statute. In view of plaintiffs' testimony and allegations that they are unable to obtain a bond and further because of the self-executing features of the statute which deprived plaintiffs the use of the courts of this state to enforce their contracts if they fail to register in accordance with the provisions of the act, it seems to this court that a judicial controversy is present. Therefore, plaintiffs' have standing in this court (Uhden, Inc. v.

Greenough, 181 Wash. 412). Apparently defendants feel that plaintiffs should go through the formality of applying for a certificate of registration without first having acquired a bond and be refused which defendant has stipulated would happen, or else go ahead and participate in the contracting business and thus be guilty of a misdemeanor and have to suffer the consequences of having committed a crime before this action can be brought to determine the constitutionality of the act.

It is the contention of the plaintiffs that the act is unconstitutional for the following reasons:

(1) It violates Article 1 of Section 10 of the United States Constitution in that it impairs the obligation of contracts.

(2) That the effect of the act is that it takes property without due process of law in violation of the 14th Amendment of the United States Constitution, and Article 1, Section 3 of the Washington State Constitution.

(3) It violates Article 1, Section 12 of the Washington State Constitution and the 14th Amendment of the United States Constitution in that the effect of the act is to deny the equal protection of the laws to the plainiffs and it confers special privileges and immunities upon certain others affected by the law.

(4) It violates Article 1, Section 17 of the Washington Constitution in that a violation of the act would constitute imprisonment for debt under Section 2 of the act.

(5) It violates Article 2, Section 19 of the Washington State Constitution in that the bill embraces more than the one subject set forth in the title of the act.

In view of the court's holding as to plaintiffs' 5th and final contention, it is unnecessary to discuss the first four. Article 2, Section 19, provides as follows:

> "No bill shall embrace more than one subject and that shall be included in the title."

It is plaintiffs' position that the title of Chapter 77, Laws of 1963, is a restrictive one and not general, and that the provisions of the act include subjects which do not fall within the restrictive title. The plaintiffs argue that Section 4 providing for the furnishing of a bond and Section 5 requiring liability insurance, are not germane to or related in any way to the subject of registration. On the other hand defendants assert that the purpose of the act is the registration of contractors and that the title contains only one subject, namely, registration and that the provisions for a bond and liability insurance are part of the registration procedures and, therefore, germane and related to the general purpose of the act.

The purposes of the constitutional provision are to protect and enlighten members of the legislature, to apprise the people generally concerning the subjects of legislation being considered, and to prevent hodge-podge or log rolling legislation. The title of an act need not be an index to the contents of the enactment or express in detail every phase of the subject dealt with in the act, but it is sufficient if the title gives such notice as should reasonably lead to an

inquiry into the body of the act itself, or indicates, to an inquiring mind, the scope and purpose of the law (State ex rel Washington Toll Bridge Authority v. Yelle, 32 Wn. 2d, 13). A title may be general or restrictive, that is, it may be either broad and comprehensive and cover all legislation germane to the general subject stated, or it may be one in which a particular part or branch of the subject is carved out and selected as the subject of the legislation. A restrictive title is not regarded as liberally as is a general one, and provisions of the bill which it does not fairly embrace cannot be given force (Gruen v. State Tax Commission, 35 Wn. 2d, 1).

It appears to the court when you consider the act in its entirety that its general purpose is to regulate the contracting business. This is done by requiring the contractors to (1) register, (2) furnish a bond or cash deposit, and (3) furnish liability insurance. With these provisions the act regulates the industry by limiting the contractors who may participate in it to those who furnish certain information required for registration and in addition give evidence of financial responsibility to the extent of $2,000.00 and liability insurance. To say that the purpose of the act is to register contractors is to say that the word registration means the same as the word regulation. Registration is only a part of regulation. To hold that it means what defendants contend here would be to unreasonably enlarge the meaning and effect given it in the law. It has been defined as:

> "The act of making a list, or catalogue, or schedule, or register; entering in a book a statement or a memorandum of facts to serve as memorials or evidence." 34 Cyclopedia of Law and Procedure, 1026.

> "To register is to enter in a register; to record formally and distinctly; to enroll; to enter in a list. As a noun, the word means official record." In re Plumb, 7 N.Y. Supp. 492.

In our statutes the word "registration" is used interchangeably with the word "license" or "certify." For example, after fulfilling the necessary educational requirements and paying a fee, etc., under R.C.W. 18.74.040 one would become a registered physical therapist, and under R.C.W. 18.43.050, a registered professional engineer. At the same time under R.C.W. 18.32.090 one would become a licensed dentist, and under R.C.W. 18.25.020, a licensed chiropractor, and under R.C.W. 18.83.080, one would become a certified psychologist. These terms for all practical purposes mean the same. Any person desiring to work in those fields must measure up to the standards of education, training, experience and ability required by the statute as a condition precedent to the issuance of the license, certificate of registration or certificate. Licensing and registration are concerned with and associated generally with the competency and ability of the applicant, not with his ability to furnish a bond. In the title of all of our statutes requiring a bond as a condition to the issuance of a certificate of registration, or license, either broader terms or a more detailed index of the provisions of the act are used than the bare reference to regulation, licensing or certification. Neither or both of the terms, "Relating to" or "Regulating" appear in all the licensing or registration statutes. Also those statutes containing a bonding requirement as a condition of doing business but not requiring a license or registration, contain either or both of the above terms and/or a reference to

bonding in the title. It is apparent that the term "registration" means in a more liberal sense, the same as "license" or in the stricter sense the entering of names and information in a register as heretofore defined. Under neither meaning can bonding be considered germane or related to registration.

Counsel has not cited nor has the court been able to find, any precedent in the statutes or cases of this or any other jurisdiction for including under the limited subject of registration, provision for bonding and insurance. The court has reviewed all of the statutes cited by defendants which contain bonding and licensing provisions, and also reviewed all of the remaining Session Laws codified under Chapter 18 of the Revised Code of Washington and is unable to find any instance where the legislature has given to the term "registration" the broad meaning contended for by defendants. The term registration is restrictive. It does not suggest to a person that there will be any provisions in the act other than those ordinarily associated with registration as heretofore defined and used in the statutes.

The case of State v. Seattle Taxicab and Transfer Co., 90 Wash. 416, involved the constitutionality of an act entitled:

> "An Act Relating to and Regulating Common Carriers of Passengers Upon Public Streets, Roads and Highways, Providing for the issuance of Permits; Prescribing Penalties for Violations, and Providing When This Act Shall Take Effect."

Section 2 of that act provided that anyone operating a common carrier of passengers on public streets for hire had to

post the surety bond in the sum of $2500.00. The State brought an action against the defendants and from a verdict finding the defendants guilty of violating the act, they appealed and questioned the constitutionality of the act on the grounds that the title:

> "Gave no hint that a bond is to be required . . . . before they will be permitted to engage in the business of carrying passengers."

The Court in disposing of that contention stated as follows:

> "Unquestionably the subject matter of the act is the *regulation* of common carriers of passengers, and the requirement that certain classes of such carriers shall give a bond to cover losses caused by negligence in the exercise of the business is not *so far foreign* to the general subject as to be embraced in a title which refers only to the general subject." (Emphasis mine)

From that language it is apparent that the Supreme Court has held that bonding is germane to the general subject of regulation. With this I agree. However, being germane to regulation does not make it germane to registration. Registration is a more restrictive term than regulation and, therefore, will not be regarded as liberally. From the reasoning of the court it is apparent to me it would not give the same liberal construction to the term registration and the bonding features of the act, would, therefore, not be germane to that restrictive term. It is obvious from the language used that the court felt that bonding was somewhat foreign to the general subject of regulation but not so far foreign as to make the act unconstitutional. You will note that the court did not relate the bonding provision to that portion of the title providing for the "issuance of permits."

The issuance of permits seems to me to be analogous to the issuing of a license or registration certificate, but the court did not hold bonding relating to that section of the title but instead held that it related to the general subject of "regulation."

It is, therefore, my conclusion that the term "registration" is restrictive and that the legislature through the title to Chapter 77, Laws of 1963, has carved out a branch of the general subject of regulation of contractors and, therefore, the title cannot be regarded as liberally as if it were a general one. In view of that it is the holding of this court that the bonding provisions in Section 4 and the insurance provisions in Section 5 of the act are not germane or related to the subject of registration contained in the title and, therefore, the bill is in violation of Article 2, Section 19 of the Washington State Constitution, in that the act contains more than the one subject contained in the title. For that reason the act is unconstitutional and plaintiffs' prayer asking for an injunction against the defendant, Louise Taylor as Director of Licenses of the state of Washington, will be granted.

WILLIAM H. WILLIAMS
JUDGE

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE TRIAL COURT

(The introductory paragraphs and Finding of Fact I relating to the indentity of the plaintiff contractors are omitted.)

FINDINGS OF FACT

II

This action was commenced by the named plaintiffs as a class action on behalf of themselves and on behalf of all others similarly situated. There are one hundred eighty-five other contractors who are residents of Spokane County, Washington and who have similar claims against the defendant, who knew of and consented to this law suit and who have authorized and delegated the plaintiffs to commence this action on their behalf. There are additional other persons, the exact number and identity of whom is unknown, who have similar claims against defendant. As to such additional persons, the plaintiffs have taken all reasonable steps to advise them of this law suit. The plaintiffs have interests in common with all such other persons as to the issues raised in this law suit.

III

The named plaintiffs adequately represent the class described in Finding of Fact No. II as to the issues raised in this law suit.

IV

The members of the class described in Finding of Fact No. II are so numerous as to make it impractical to bring them all before the court.

V

The plaintiffs commenced this action on July 26th, 1963, to challenge the constitutionality of Chapter 77, Laws of 1963 of the State of Washington (herein referred to as "The Act"), which was to become effective on August 1st, 1963,

to enjoin the enforcement of The Act and to seek a refund of registration fees. After commencement of this action, plaintiffs voluntarily dropped their prayer for a refund of registration fees as a part of this action.

VI

The defendant is the Director of Licenses of the State of Washington and was sued in that capacity.

VII

In July, 1963, prior to the commencement of this action, the plaintiffs, Treffry, Smith, Turnbull, Jamieson and Ebright, applied for the bond required by Section 4, of The Act and each of the said plaintiffs were refused a bond. That they made a reasonable effort to obtain a bond as required by Section 4 of The Act, but have been unable to obtain the bond because of an inability to comply with the financial underwriting requirements established by the bonding companies which were contacted. That the reason they were refused a bond had no connection with their credit reputations or ability as contractors. The bonding companies contacted are large, well established, reliable and reputable bonding companies.

VIII

The plaintiffs Tornow and Koeppel did not apply for a bond prior to the commencement of this action, but the court finds that had the plaintiffs Tornow and Koeppel applied for a bond at that time they would have been refused a bond for the same reason Treffry, Smith, Turnbull, Jamieson and Ebright were refused. The plaintiff William S. Boulton, Inc. was and is bondable under The Act.

IX

The court finds that the underwriting requirements were stabilized throughout the industry and that the primary underwriting requirement for a bond is substantial net worth or substantial net quick assets on the part of a contractor and that this requirement must be met notwithstanding the credit reputation and performance ability of the contractor.

X

The underwriting requirements for a bond are that the applicant must have a net worth of $25,000.00 if he is seeking a $1,000 bond or a net worth of $35,000.00 if he is seeking a $2,000 bond, or in the alternative net quick assets of $10,000.00 for a $2,000 bond or net quick assets of $5,000.00 for a $1,000 bond.

XI

There is a direct relationship between the underwriting requirements established by the bonding companies and the conditions or scope of the bond to be issued. The conditions of the bond required by Section 4 of The Act are such that the underwriting requirements are more stringent than for other license-type bonds required by this state.

XII

The plaintiff, Treffry, at all times herein material, had no cash or negotiable securities or other assets of the types acceptable to the defendant as a deposit in lieu of the bond required by Section 4. The plaintiff Treffry has been unable to obtain a bank loan from the Old National Bank in Spokane to provide him with a sufficient amount of cash to deposit to comply with the requirements of Section 4 of The Act.

XIII

That of the plaintiffs Smith, Turnbull, Jamieson, Ebright, Tornow and Koeppel, some are in the same situation as plaintiff Treffry. That others of the plaintiffs could borrow the funds necessary to satisfy the requirements of Section 4 of The Act with varying degrees of difficulty.

XIV

If The Act is enforced the plaintiffs and others similarly situated will have to choose between going out of business, or complying with The Act with the varying degrees of difficulty, or operate in violation of The Act, risking the penalties in Section 2 and Section 8.

XV

The defendant stipulated and the court finds it a fact that the defendant would have refused to have registered the plaintiffs had they applied for registration prior to July 29, 1963, without complying with the provisions of Section 4 of The Act.

XVI

The Act, as originally written, would have gone into effect on August 1, 1963. The original complaint in this action was filed on July 26, 1963. On that date, this court signed a temporary restraining order ex parte, enjoining the enforcement of The Act. The complaint and temporary restraining order were served on the defendant and the Attorney General on July 29, 1963. After being served with the temporary restraining order on July 29, 1963, the defendant, in obedience to the terms of that order, refused to further process applications for registration and did not further process any applications for registration until on or after August 5, 1963.

XVII

Had the plaintiffs applied for registration between July 29, 1963, and August 5, 1963, their applications would not have been processed by the defendant.

XVIII

On August 5, 1963, this court, after hearing argument from the Attorney General and counsel for plaintiffs, signed a temporary injunction which, by its terms, became effective August 30, 1963, leaving the temporary restraining order effective in the interim. The temporary injunction allowed the defendant to register contractors, except it enjoined the defendant from enforcing Sections 4 and 5 of The Act and it required the defendant to register contractors, whether or not they complied with said sections.

XIX

Between August 5 and August 30, 1963, all of the named plaintiffs registered under the terms of the temporary in-

junction without complying with Section 4 of The Act. Their registration fees were paid under protest.

XX

As of October 4, 1963, 5,919 contractors had registered under The Act. Of these, 3,899 registered under the terms of the temporary injunction (without complying with Section 4 and/or Section 5 of The Act).

XXI

If the enforcement of The Act is not permanently enjoined, the defendant will refuse to register the named plaintiffs and others similarly situated, unless they can and do comply with Section 4 and all other provisions of The Act.

XXII

At the time of commencement of this action, and at the time of trial and at the present time, the plaintiffs intended and intend to submit bids for contracting work, to contract for the performance of contracting work, and to do work as contractors.

XXIII

Because of the continuing nature of their contracting activities, all of the plaintiffs were or are engaged in the contractual relationships before The Act became effective, which will require them to perform work as contractors after The Act becomes effective, if its enforcement is not permanently enjoined.

XXIV

The plaintiffs depend for their livelihood on doing work as contractors.

XXV

These plaintiffs, and each of them, have good credit records, regularly pay their debts, are competent in their respective crafts, and their continuation in the contracting

business in no way harms or threatens the health, safety, morals or welfare of the people of the State of Washington.

XXVI

Certain parties, while posing as legitimate businessmen and members of the contracting industry, have through fraud or false representations, bilked consumers of this state of their property or monies.

XXVII

Certain parties and certain financially insolvent contractors have caused, by their failure to pay their employees or suppliers, labor and materialmen's liens to be filed on property of citizens of this state even though these citizens had fully paid the contractor.

XXVIII

Certain parties and certain financially insolvent contractors have failed to pay their taxes to the State of Washington and to the several political subdivisions of the state.

XXIX

Certain parties and certain financially insolvent contractors have avoided their just obligations to citizens of this state by fleeing the state when civil actions have been attempted to be brought against them.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I

This court has jurisdiction over the subject matter of this action and the parties thereto.

II

The plaintiffs have standing to bring this action at this time.

III

This is a valid class action brought by the plaintiffs on behalf of all others similarly situated.

IV

By the terms of The Act, the defendant is charged with the administration of The Act, and the defendant is authorized to and vested with the duty to issue or refuse to issue certificates of registration to contractors.

V

The defendant is a proper defendant for this action.

VI

This lawsuit presents a justifiable [sic] controversy and is not a request for an advisory opinion.

VII

The bonding provisions in Section 4 of said law and the insurance provision in Section 5 of The Act are not germane or related to the subject of registration.

VIII

Chapter 77, Laws of 1963 of the State of Washington, violates Article II, Section 19 of the Constitution of the State of Washington and said act is, therefore unconstitutional.

IX

Plaintiff's prayer for an injunction against the defendant, as Director of Licenses of the State of Washington, will be granted and plaintiffs shall recover their costs herein.

DONE IN OPEN COURT this 24th day of March, 1964.

WILLIAM H. WILLIAMS
JUDGE

END